

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO.9412 OF 2005

1. Mahadeo Annapa Hingmire and ors. Petitioners.

Vs

1. Ramchandra Gopal Mane, deceased
through his L.Rs
(a) Smt Pushpalata Ramchandra Mane
and ors. .. Respondents.

Mr G.M.Savgave, for the petitioners.

Mr N.J.Patil, for respondent nos 1A to 1D. and 2.

CORAM : D.B.BHOSALE, J.
DATE : 20.09.2006

PC:

1. Heard the learned counsel for the parties.
2. Rule. Returnable forthwith. Mr Patil, learned counsel, waives services for respondent nos 1A to 1D and 2. By consent, rule is heard finally.

3. This petition is directed against the order dated 10.11.2005 passed on the application at Exhibit-197 filed by the respondents-plaintiffs seeking direction to the defendants to produce original tax receipts on record. Admittedly, the application at Exhibit 165-D was filed earlier with the similar prayer and that application was rejected by the trial Court vide order dated 13.4.2005. The respondents-plaintiffs had carried that order in writ petition before this court, being Writ Petition No.3432 of 2005. This writ petition was

disposed of by the order dated 7.6.2005, which reads thus:-

"Petitioners are aggrieved by the order of the trial Court refusing a direction to produce the original tax receipts issued by the sugar factory to the respondents. The petitioners have sought for production of the original since according to them the tax receipts produced by the respondents are bogus. This is a matter for trial and can be established at trial. In fact, appropriate inference can be drawn by the Court in case the documents produced are suspicious and originals are not produced. There is no reason to interfere. Petition is, therefore, dismissed.

2. The petitioners shall be however at liberty to raise the point in accordance with section 105 of the Code of Civil Procedure as may be advised if the judgment is adverse to the petitioners."

4. Thereafter, it appears that the respondents-plaintiffs had applied for certified copies of tax receipts and the concerned authority, viz. Tahasildar, Shirol, issued a certificate stating that the certified copies of tax receipts, as demanded by the respondents, were not found and hence could not be supplied. In view thereof, the petitioners once again filed an application at Exhibit-197 making similar prayer on which the impugned order has been passed by the trial Court. The learned Judge, while passing the impugned order, has completely overlooked the observations made by the learned Single Judge while

disposing of the earlier writ petition by the aforestated order. In this order, it was categorically observed that whether tax receipts produced by the petitioners-defendants are bogus is a matter of trial and can be established during trial. It was further observed that, in fact, appropriate inference can be drawn by the court in case the documents produced are suspicious and the originals are not produced. By making these observations, this Court refused to interfere with the order passed by the trial Court rejecting the application of the respondents-plaintiffs. Merely because the application for certified copy of tax receipts was made and the concerned officer could not, for whatever reasons, supply the certified copies, cannot be a ground for filing fresh application and even if such application was filed the trial Court ought not to have granted that application in view of the aforesaid categoric observation recorded by this Court. It is always open for the trial court to draw an inference or adverse inference if documents are not produced on record and/or it is possible for the petitioners to establish that the receipts produced on record are bogus. The trial Court in the impugned order in paragraph 5 has made the observation that the defendants have not denied possession of the original tax receipts with them. It would, therefore, be possible

for the trial court to draw an appropriate inference if the original receipts do not come on record.

5. With these observations, the rule is made absolute. The order impugned is quashed and set aside. Hearing of the suit is expedited.

(D.B.BHOSALE, J.)